

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

| | | |
|-------------------------------|---|--------------------------|
| IN RE: | § | |
| NORTH PARK OFFICE TOWER, L.P. | § | CASE NO. 09-39205 |
| Alleged Debtor | § | (CHAPTER 11 Involuntary) |

KEVIN ORTON'S MOTION FOR LEAVE TO AMEND INVOLUNTARY PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

Kevin Orton, hereafter "Orton", represents:

THIS MOTION SEEKS AN ORDER THAT MAY ADVERSELY AFFECT YOU. IF YOU OPPOSE THE MOTION, YOU SHOULD IMMEDIATELY CONTACT THE MOVING PARTY TO RESOLVE THE DISPUTE. IF YOU AND THE MOVING PARTY CANNOT AGREE, YOU MUST FILE A RESPONSE AND SEND A COPY TO THE MOVING PARTY. YOU MUST FILE AND SERVE YOUR RESPONSE WITHIN 20 DAYS OF THE DATE THIS WAS SERVED ON YOU. YOUR RESPONSE MUST STATE WHY THE MOTION SHOULD NOT BE GRANTED. IF YOU DO NOT FILE A TIMELY RESPONSE, THE RELIEF MAY BE GRANTED WITHOUT FURTHER NOTICE TO YOU. IF YOU OPPOSE THE MOTION AND HAVE NOT REACHED AN AGREEMENT, YOU MUST ATTEND THE HEARING. UNLESS THE PARTIES AGREE OTHERWISE, THE COURT MAY CONSIDER EVIDENCE AT THE HEARING AND MAY DECIDE THE MOTION AT THE HEARING.

REPRESENTED PARTIES SHOULD ACT THROUGH THEIR ATTORNEY.

1. On December 1, 2009, Orton filed this involuntary bankruptcy petition, alleged that his status as a guarantor makes him eligible to be a petitioning creditor under 11 USC § 303. Orton has other claims against the Alleged Debtor that also makes him eligible to be a petitioning creditor under 11 USC § 303.

2. Orton seeks leave to amend his involuntary petition to assert he is a creditor eligible to be a petitioning creditor under 11 USC § 303 by virtue of unsecured debts owed to him by the Alleged Debtor in addition to his status as a guarantor of a debt owed by the Alleged Debtor to ERPILE, LLC.

3. Exhibit "I" attached hereto is a copy of the Amended Involuntary Petition. This amended involuntary petition includes amounts that Orton paid on behalf of the Alleged Debtor and which remain unpaid.

WHEREFORE, Orton prays that this Court authorize the filing of the Amended Involuntary Petition and grant Orton such other and further relief, in law and in equity, as is just.

Respectfully submitted,

By: 

Alan Gerger

State bar No. 07816350

Dunn, Neal & Gerger L.L.P.

3050 Post Oak Blvd., Suite 400

Houston, Texas 77056

(713) 403-7400 Phone

(713) 960-0204 Fax

ATTORNEYS FOR KEVIN ORTON

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing was served upon the party shown below by facsimile or electronically by the Clerk of the Court on **January 2, 2010:**

Richard E. Wakefield
2500 West Loop South, Suite 255
Houston, Texas 77027

By: 

Alan S. Gerger

FORM 115
(10-05)

AMENDED

| | | | | | | | | | |
|--|-------------|---|--|----------------|-------------|------|--------------|----------|-------|
| United States Bankruptcy Court | | INVOLUNTARY PETITION | | | | | | | |
| <u>Southern</u> District of <u>Texas, Houston Division</u> | | | | | | | | | |
| IN RE (Name of Debtor - If Individual: Last, First, Middle) Northpark Office Tower, LP | | ALL OTHER NAMES used by debtor in the last 8 years (Include married, maiden, and trade names.) | | | | | | | |
| LAST FOUR DIGITS OF SOC. SEC. NO./Complete EIN or other TAX I.D. NO. (If more than one, state all.) XX-XXX4867 | | | | | | | | | |
| STREET ADDRESS OF DEBTOR (No. and street, city, state, and zip code) 1415 N. Loop West Suite 222 Houston, Texas | | MAILING ADDRESS OF DEBTOR (If different from street address) | | | | | | | |
| COUNTY OF RESIDENCE OR PRINCIPAL PLACE OF BUSINESS <u>Harris</u> 77008 ZIP CODE | | ZIP CODE | | | | | | | |
| LOCATION OF PRINCIPAL ASSETS OF BUSINESS DEBTOR (If different from previously listed addresses) | | | | | | | | | |
| CHAPTER OF BANKRUPTCY CODE UNDER WHICH PETITION IS FILED <input type="checkbox"/> Chapter 7 <input checked="" type="checkbox"/> Chapter 11 | | | | | | | | | |
| <p style="text-align: center;">INFORMATION REGARDING DEBTOR (Check applicable boxes)</p> <div style="display: flex; justify-content: space-between;"> <div style="width: 45%;"> <p>Petitioners believe:</p> <p><input type="checkbox"/> Debts are primarily consumer debts</p> <p><input checked="" type="checkbox"/> Debts are primarily business debts</p> </div> <div style="width: 50%;"> <p style="text-align: center;">TYPE OF DEBTOR</p> <p><input type="checkbox"/> Individual <input type="checkbox"/> Stockbroker</p> <p><input type="checkbox"/> Partnership <input type="checkbox"/> Railroad</p> <p><input type="checkbox"/> Corporation <input type="checkbox"/> Health Care Business</p> <p><input type="checkbox"/> Clearing Bank <input type="checkbox"/> Commodity Broker</p> <p><input checked="" type="checkbox"/> Other: <u>Limited Partnership</u></p> </div> </div> | | | | | | | | | |
| BRIEFLY DESCRIBE NATURE OF BUSINESS | | | | | | | | | |
| <p style="text-align: center;">VENUE</p> <p><input checked="" type="checkbox"/> Debtor has been domiciled or has had a residence, principal place of business, or principal assets in the District for 180 days immediately preceding the date of this petition or for a longer part of such 180 days than in any other District.</p> <p><input type="checkbox"/> A bankruptcy case concerning debtor's affiliate, general partner or partnership is pending in this District.</p> | | <p style="text-align: center;">FILING FEE (Check one box)</p> <p><input checked="" type="checkbox"/> Full Filing Fee attached</p> <p><input type="checkbox"/> Petitioner is a child support creditor or its representative, and the form specified in § 304(g) of the Bankruptcy Reform Act of 1994 is attached.</p> | | | | | | | |
| <p style="text-align: center;">PENDING BANKRUPTCY CASE FILED BY OR AGAINST ANY PARTNER OR AFFILIATE OF THIS DEBTOR (Report information for any additional cases on attached sheets.)</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 33%; padding: 5px;">Name of Debtor</td> <td style="width: 33%; padding: 5px;">Case Number</td> <td style="width: 33%; padding: 5px;">Date</td> </tr> <tr> <td style="padding: 5px;">Relationship</td> <td style="padding: 5px;">District</td> <td style="padding: 5px;">Judge</td> </tr> </table> | | | | Name of Debtor | Case Number | Date | Relationship | District | Judge |
| Name of Debtor | Case Number | Date | | | | | | | |
| Relationship | District | Judge | | | | | | | |
| <p style="text-align: center;">ALLEGATIONS (Check applicable boxes)</p> <p>1. <input checked="" type="checkbox"/> Petitioner(s) are eligible to file this petition pursuant to 11 U.S.C. § 303(b).</p> <p>2. <input checked="" type="checkbox"/> The debtor is a person against whom an order for relief may be entered under title 11 of the United States Code.</p> <p>3.a. <input checked="" type="checkbox"/> The debtor is generally not paying such debtor's debts as they become due, unless such debts are the subject of a bona fide dispute as to liability or amount;</p> <p style="text-align: center;">or</p> <p>b. <input type="checkbox"/> Within 120 days preceding the filing of this petition, a custodian, other than a trustee, receiver, or agent appointed or authorized to take charge of less than substantially all of the property of the debtor for the purpose of enforcing a lien against such property, was appointed or took possession.</p> | | <p style="text-align: center;">COURT USE ONLY</p> <div style="border: 2px solid black; padding: 10px; text-align: center; margin: 10px auto; width: 150px;"> <p style="margin: 0;">EXHIBIT</p> <p style="font-size: 2em; margin: 5px 0;">" I "</p> </div> | | | | | | | |

If a child support creditor or its representative is a petitioner, and if the petitioner files the form specified in § 304(g) of the Bankruptcy Reform Act of 1994, no fee is required.

Name of Debtor Northpark Office Tower, LPOFFICIAL FORM 5 - Page 2
Involuntary Petition
(10/05)

Case No. _____

TRANSFER OF CLAIM☐ Check this box if there has been a transfer of any claim against the debtor by or to any petitioner. Attach all documents evidencing the transfer and any statements that are required under Bankruptcy Rule 1003(a).**REQUEST FOR RELIEF**

Petitioner(s) request that an order for relief be entered against the debtor under the chapter of title 11, United States Code, specified in this petition. If any petitioner is a foreign representative appointed in a foreign proceeding, a certified copy of the order of the court granting recognition is attached.

Petitioner(s) declare under penalty of perjury that the foregoing is true and correct according to the best of their knowledge, information, and belief.

X _____

Signature of Petitioner or Representative (State title)
Kevin Orton

Name of Petitioner _____ Date Signed _____

Name & Mailing

Address of Individual _____

Signing in Representative _____

Capacity _____

X _____

Signature of Attorney

Date _____

Dunn, Neal & Gerger, LLP

Name of Attorney Firm (If any)

3050 Post Oak Blvd, Ste 400, Houston, TX 77056

Address

(713) 403-7400

Telephone No. _____

X _____

Signature of Petitioner or Representative (State title)

Name of Petitioner _____ Date Signed _____

Name & Mailing

Address of Individual _____

Signing in Representative _____

Capacity _____

X _____

Signature of Attorney

Date _____

Name of Attorney Firm (If any)

Address _____

Telephone No. _____

X _____

Signature of Petitioner or Representative (State title)

Name of Petitioner _____ Date Signed _____

Name & Mailing

Address of Individual _____

Signing in Representative _____

Capacity _____

X _____

Signature of Attorney

Date _____

Name of Attorney Firm (If any)

Address _____

Telephone No. _____

PETITIONING CREDITORS

| | | |
|--|----------------------------------|-------------------------------------|
| Name and Address of Petitioner Kevin Orton, 3843 S. Bristol #242 Santa Ana, CA 92704 | Nature of Claim See Exhibit A | Amount of Claim See Ex. A |
| Name and Address of Petitioner | Nature of Claim | Amount of Claim |
| Name and Address of Petitioner | Nature of Claim | Amount of Claim |
| Note: If there are more than three petitioners, attach additional sheets with the statement under penalty of perjury, each petitioner's signature under the statement and the name of attorney and petitioning creditor information in the format above. | | Total Amount of Petitioners' Claims |

_____ continuation sheets attached

Exhibit "A" to Amended Involuntary Petition

1. Kevin Orton is a guarantor of the debt that is owed by the Alleged Debtor to ERPILE, LLC. Upon information and belief, the amount of the guaranteed debt is over \$2,000,000.00.
2. Kevin Orton advanced funds on behalf of the Alleged Debtor. On February 8, 2009, Orton sent an e-mail to the Alleged Debtor advising that these amounts are owed. These amounts total over \$50,000.00.

Kevin Orton
Unbilled Costs by Job
All Transactions

| Type | Date | Source Name | Memo | Account | Billing Status | Amount |
|---------------------|-----------|-----------------------|---|---------------------|----------------|-------------------------|
| 1415 expense | | | | | | |
| Check | 3/9/2006 | Misc Business Expe... | security nat cap loan processing fees | Rental Expense 1415 | Unbilled | 2,500.00 |
| Check | 3/9/2006 | Misc Business Expe... | sec nat cap more loan fees | Rental Expense 1415 | Unbilled | 2,500.00 |
| Check | 3/9/2006 | Misc Business Expe... | tri-d services environmental report | Rental Expense 1415 | Unbilled | 1,225.00 |
| Check | 3/14/2006 | Misc Business Expe... | tri-d services environ report | Rental Expense 1415 | Unbilled | 1,225.00 |
| Check | 7/27/2006 | Neufeld, Howard | 1415 advice howard nuefeld | Legal Fees | Unbilled | 225.00 |
| Check | 3/9/2007 | Misc Business Expe... | lou sanchez cad work | Rental Expense 1415 | Unbilled | 300.00 |
| Check | 1/4/2008 | Misc Business Expe... | web site for northpark office towerto access technology. | Rental Expense 1415 | Unbilled | 200.00 |
| Check | 1/17/2008 | Misc Business Expe... | web site pacific IT inv 1036 | Rental Expense 1415 | Unbilled | 720.00 |
| Check | 1/23/2008 | Misc Business Expe... | northpark web site design | Rental Expense 1415 | Unbilled | 200.00 |
| Check | 3/31/2008 | Misc Business Expe... | Security National Life Insurance Co loan extention fee for 1415 ... | Rental Expense 1415 | Unbilled | 45,500.00 |
| Check | 4/4/2008 | Dick S. Lin, CPA | accounting | Rental Expense 1415 | Unbilled | 2,000.00 |
| Check | 6/9/2008 | Misc Business Expe... | texas state secretary fee | Rental Expense 1415 | Unbilled | 3.00 |
| Total 1415 expense | | | | | | <u>56,598.00</u> |
| TOTAL | | | | | | <u>56,598.00</u> |